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Ἐλληνας ἐλευθεροῦν οὐδὲν δεομένους; *Moralia* 1102 B ὑποκρίνεται . . . οὐδὲν δεόμενος. Other examples, some of them not quite so clear, are: *Rhesus* 321; Eurip. *Suppl.* 672; Gorgias *Palamedes* 15; Aeschylus *Suppl.* 358; Thucyd. iv. 130, vi. 20, viii. 64; Lys. *Or.* ii. 64, fr. 6. 1; Andoc. i. 49, 80; Isaeus ii. 30; Isocr. xi. 43, xiii. 4, xv. 150, 238, vii. 25; Xen. *Mem.* iii. 8. 3, *Cyr.* i. 4. 10, *Ath. Pol.* 3, *Hell.* i. 4. 16, ii. 4. 23, 35, vii. 1. 40, 4. 35, Aesch. iii. 104, 139; Plutarch *passim*; Lucian *Fugitivi* 24, *Timon* 35, *Hermot.* 81 ἄ . . . πρὸς ἡμᾶς οὐδὲν δεομένους . . . διεξέρχεται. The idiom naturally extends to οὐδὲν δέον and μηδὲν δέον: Xen. *Cyr.* iv. 6. 3 ὁ μὲν νῦν ἄρχων οὗτος ἀκοντίσας ἡμαρτεν, ὥς μή ποτε ὤφελεν, ὁ δ' ἐμὸς παῖς βαλὼν, οὐδὲν δέον, καταβάλλει τὴν ἄρκτον. Cf. Plato *Laws* 816 E; Lucian *Prom.* 6, *De imag.* 13.

I of course do not mean to say that οὐδὲν δέομαι cannot often be taken in its simple and literal sense. I am merely trying to show that its idiomatic and colloquial force has been generally overlooked in our lexicons, grammars, and commentaries.

PAUL SHOREY

CICERO AD FAMILIARES vii. 13

Et tu soles ad vim faciundam adhiberi! Neque est quod illam exceptionem in interdicto pertimescas: "Quo tu prior vi hominibus armatis non veneris," scio enim te non esse procacem in lacessendo.

The sense of the passage is plain. Trebatius is good-humoredly chaffed for having exchanged the gown for the soldier's cloak. In the note *ad locum* in Tyrrel's school selection of the *Letters* there is a discussion which, for the avowed purpose of the book, is, to say the least, excessively long. In spite of its length, however, it seems to me to miss some important points.

The interdict in question is unquestionably the less common of the interdicts "*Unde vi*" which Cicero called "*De hominibus armatis*" (*Pro Caecina* 91, 92). Omitting minor details, the formula ran: "*Unde tu illum vi hominibus armatis deiecisti, eo restituas.*"

The first thing to be noticed is that Cicero's citation will not fit into this formula at all.¹ The *tu* of the formula is the aggressor, the *tu* of Cicero's citation is the complainant. As, from its very nature, the interdict was always addressed to the defendant, to the alleged aggressor, it follows that Cicero is either quoting approximately or is not quoting the interdict itself. The phraseology is too precise to make the former supposition probable. We may therefore assume that Cicero had in mind something else than the interdictory formula. If we examine Cicero's

¹ Even Lenel *Das Edictum Perpetuum*, in his discussion of the interdict, seems to have overlooked this fact.

language, the exception will be clearly seen to be a qualification to a promise of relief. Such promises of relief were contained in the edict. (Cf. *iudicium dabo, vim fieri veto*.) Accordingly, it is likely that Cicero was quoting from that portion of the praetorian edict in which the praetor announced his intention to grant an interdict to anyone dispossessed by force of arms.

The chief difficulty with the passage is the following: Cicero distinctly states that the interdict "*De hominibus armatis*" admitted of no exceptions (*Pro Caec.* 23). This statement cannot be avoided (Lenel *op. cit.*; Roby *Roman Legal Procedure from Cicero to the Antonines*, App.) by assuming that the absence of exceptions was occasional or accidental. Cicero (*ibid.*) says *ut est consuetudo*, which, in a system of law based so largely on precedent as the Roman law was in Cicero's day, and as our own common law is today, is practically conclusive. More than that, however, Cicero in his more detailed discussion of the formula (*ibid.* 91-93) makes the *sine ulla exceptione* the essential principle of this interdict. Even if we neglect this latter fact, and take the *ut est consuetudo* in its literary sense, the presence of an exception must have been unusual and infrequent. But in the letter to Trebatius, Cicero speaks of *illa exceptio*—i. e., something very well known and of frequent occurrence.

We are left, then, with an apparent contradiction between the passage in the letter to Trebatius and the passage in the oration for Caecina. Instead of inferring carelessness of expression on Cicero's part, or even a direct blunder, a more legitimate inference would be that the insertion of exceptions in this interdict was a practice that had arisen between 69 B. C. and 53 B. C., the dates of the oration and of the letter, respectively. In those sixteen years, sixteen urban praetors and one hundred and twelve peregrine and provincial praetors had been issuing edicts and applying the *ius honorarium*. Neither in form nor in substance had these edicts attained the absolute fixity of later times. The magistrates freely granted new remedies, and still more frequently modified and changed old ones. Cicero's own experience in Cilicia (Cic. *Ad Att.* vi. 1. 15) and the action of Lucullus (Cic. *Pro Tullio* 8-10) show how readily this was done. And that the interdicts "*Unde vi*" actually were modified about this time we know from the same passage and from *Caec.* 49.

We shall in this way avoid ascribing to Cicero either astounding ignorance of his own profession or equally astounding looseness of expression in a letter addressed to a brother-lawyer, who, moreover, was one of the ablest jurists in Rome.

MAX RADIN